

Case No. 10-0407429C

NOW, THEREFORE, Director John M. Huff ("Director") of the Department of Insurance, Financial Institutions and Professional Registration ("Department"), and pursuant § 374.046 RSMo (Supp. 2009),¹ issues this Summary Cease and Desist Order to be effective on this date of issuance.

1. The jurisdiction of the Director to initiate and administer this proceeding is found in § 374.046, which provides, in part:

1. If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued

pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

- (1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
- (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;
- (3) Order a civil penalty or forfeiture as provided in section 374.049; and
- (4) Award reasonable costs of the investigation.

* * *

3. Unless the director determines that a summary order is appropriate under subsection 4 of this section, the director shall provide notice of the intent to initiate administrative enforcement by serving a statement of the reasons for the action upon any person subject to the proceedings. A statement of reasons, together with an order to show cause why a cease and desist order and other relief should not be issued, shall be served either personally or by certified mail on any person named therein. The director shall schedule a time and place at least ten days thereafter for hearing, and after notice of and opportunity for hearing to each person subject to the order, the director may issue a final order under subsection 6 of this section.

4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are being violated and consumers are being aggrieved by the violations, the order issued under subdivision (1) of subsection 1 of this section may be summary and be effective on the date of issuance. Upon issuance of the order, the director shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered.

2. Pursuant to § 374.280, the Director, after a hearing under § 374.046, may order a civil penalty or forfeiture payable to the state of Missouri authorized by § 374.049.

3. Section 374.049 authorizes the Director to impose a monetary penalty or forfeiture depending on the level of the violation.

4. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

5. Under § 375.145, the Director may issue such administrative orders as authorized under § 374.046 if he determines “that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 375.012 to 375.144.” Moreover, a violation of § 375.144 is a level four violation under section 374.049.

6. Respondent James C. McCain, Jr., is a licensed insurance producer in Missouri. Respondent McCain is the sole owner of Respondent Underwriters Service Agency, which is a registered fictitious name with the Missouri Secretary of State and which holds a business entity insurance producer license. Respondent McCain is also the sole owner of Respondent Missouri Automobile Insurance Underwriters Agency, which is an expired fictitious name according to the Missouri Secretary of State and which holds a business entity insurance producer license. Respondent Carol Hergot is a licensed insurance producer in Missouri and until recently, an employee of Respondent Underwriters Service Agency. Unless otherwise specified, the four Respondents will be collectively referred to as “Respondents”.

STATEMENT OF REASONS FOR ORDER

7. Respondents have violated § 375.144(1) by employing deception, device, scheme or artifice to defraud in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, by engaging in the following acts, practices, omissions or course of business relating to insurance.

a. On April 8, 2010, Respondent McCain admitted to the Department that Respondents accepted premium payments from consumers or from others on their behalf and failed to remit the full premium to the insurers within thirty days after the date of receipt.

b. Title 20 CSR 700-1.140(1)(D), which states:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

20 CSR 700-1.140(1)(D) (bold emphasis added).

c. On April 8, 2010, Respondent McCain admitted to the Department that Respondents failure to remit the premiums paid by consumers or by others on their behalf has resulted and may in the future result in failure to obtain or continue insurance coverage on behalf of an insured or prospective insured.

8. Respondents have violated § 375.144(4) by engaging in the following acts, practices, omissions or course of business which operated and continues to operate as a

fraud or deceit upon consumers, insurers, and others, in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly.

a. On April 8, 2010, Respondent McCain admitted to the Department that one of Respondents' bank accounts had been frozen by the bank for approximately a month and the other accounts were frozen for approximately a week.

b. For an unknown period prior to the freezing of the bank accounts, Respondents requested and accepted premium payments covering entire policy periods from consumers or others on their behalf.

c. Respondents deposited checks made payable to the Missouri Basic Property Insurance Inspection and Placement Program ("Missouri FAIR Plan") into its business accounts without authorization from Missouri FAIR Plan.

d. Respondents deposited the premium payments covering the entire policy periods and, without consent or prior authorization from the consumers, only made an installment or down payment on the policy, while retaining the remainder despite knowing that Respondents were not authorized to make installment payments.

9. Respondents have violated § 375.144(2) by engaging in the use of misrepresentation, concealment or suppression as to a material fact in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, in the following acts, practices, omissions or course of business relating to insurance.

a. Respondents misrepresented and continue to misrepresent the amount of homeowners insurance premium due to mortgage companies by including Respondents' service contract fee in the premium amount, without disclosing that the amount included the service contract fee.

10. Consumers are being aggrieved by the violations in that Respondents have failed or are failing to make premium payments to insurers to obtain new or continuing coverage, and as a result, without intervention from the Director, consumers' insurance policies would have lapsed or been cancelled for failure to pay premium.

STATEMENT REGARDING SEEKING OF CIVIL PENALTIES OR COSTS

11. The Division of Consumer Affairs of the Department of Insurance, Financial Institutions and Professional Registration is seeking civil penalties and the costs of the investigation in this matter.

NOTICE REGARDING HEARING

12. Pursuant to § 374.046.5, Respondents are hereby notified that they may request a hearing of this Summary Cease and Desist Order before the Director of the Department of Insurance, Financial Institutions and Professional Registration and such hearing will be scheduled within five days after receipt of a request in a record.

13. A hearing on the Verified Statement of Charges is scheduled on September 1, 2010, at 9:00 a.m. in Room 530, Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri, at which time Respondents are ordered to show cause why:

(1) this Summary Cease and Desist Order issued against James C. McCain, Jr., Underwriters Service Agency, Missouri Auto Insurance Underwriters Agency, and Carol Herget on this date should not be made final;

(2) a Curative Order or other appropriate order should not be issued against James C. McCain, Jr., Underwriters Service Agency, Missouri Auto Insurance Underwriters Agency, and Carol Herget; and

- (3) other relief, including penalties and costs of investigation, should not be granted against James C. McCain, Jr., Underwriters Service Agency, Missouri Auto Insurance Underwriters Agency, and Carol Herget based upon the Statement of Charges served upon James C. McCain, Jr., Underwriters Service Agency, Missouri Auto Insurance Underwriters Agency, and Carol Herget with this Summary Cease and Desist Order.

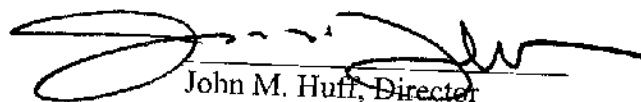
ORDER

NOW, based upon the foregoing and pursuant to § 374.046, RSMo, Respondent James C. McCain, Jr., Respondent Underwriters Service Agency, Respondent Missouri Automobile Insurance Underwriters Agency, and Respondent Carol Herget are hereby ORDERED to cease and desist the continuation of their unlawful acts, practices, omissions and courses of business and shall immediately :

- a. Cease and desist accepting premium payments from consumers or from others on their behalf and, without consent or prior authorization, failing to remit the full premium to the insurers within thirty days after the date of receipt.
- b. Cease and desist depositing checks made payable to the Missouri FAIR Plan into its business accounts without authorization from Missouri FAIR Plan.
- c. Cease and desist misrepresenting the amount of homeowners insurance premium due to mortgage companies by including Respondents' service contract fee in the premium amount, without disclosing that the amount included the service contract fee.
- d. Cease and desist depositing consumers' homeowners insurance premium payments, which were for payment of the entire policy period, and, without consent or

prior authorization from the consumers, only making an installment or down payment on the policy, while retaining and/or utilizing the remainder for purposes other than payment of those consumers' premiums.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 21st day of May, 2010.


John M. Huff, Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by certified mail, postage prepaid, and by UPS Next Day, this 28th day of May, 2010, to:

James C. McCain, Jr.
Underwriters Service Agency
Missouri Automobile Insurance Underwriters Agency
3720 Hampton Avenue
St. Louis, MO 63109

James C. McCain, Jr.
Underwriters Service Agency
Missouri Automobile Insurance Underwriters Agency
615 N. Rock Hill Road
St. Louis, MO 63119

Carol Herget
5018 Elenore Ave., Floor 1
St. Louis, MO 63116

A handwritten signature in cursive script, appearing to read "Mary Lee", is written over a horizontal line.